

NOTIFICATION.

No. 3—L. C., dated Bangalore, 7th September 1912.

Under Rule 32 of the Rules for the conduct of business of the Mysore Legislative Council; the following Bill, to consolidate and amend the law relating to Muzrai Institutions in Mysore and to provide for certain remedies in respect of religious and charitable endowments, is published for general information with a statement of objects and reasons.

By Order,

S. HIRIYANNAIYA,

Secretary, Mysore Legislative Council.

The Mysore Muzrai Bill.

Whereas it is expedient to consolidate and amend the law relating to Muzrai Institutions in Mysore and to provide for certain remedies in respect of religious and charitable endowments; His Highness the Maharaja is pleased to enact as follows:—

1. (1) This Regulation shall be called the Mysore Muzrai Regulation; and shall come into force from

Short title and extent.

(2) It extends to the whole of Mysore.

Definitions.

2. (1) 'Muzrai Institution' shall mean and include,—

(i) every temple, mosque, or other place of worship or religious service, any Chatra, or house of feeding or rest for travellers without charge, or other institution of a religious and charitable nature, which is now actually in the sole charge of Government, or for the support of which any annual grant in perpetuity is made from the public revenues, or an inam has been granted and is recognized and registered at the inam settlement as a *devadaya* grant;

(ii) every institution of a religious or charitable nature which, under the provisions of this Regulation, has been taken under the sole management of Government, so long as it remains under such management.

(2) 'Muzrai Officer' shall mean the Deputy Commissioner of the district in which the whole or any part of the property of a religious or charitable institution shall be situated; and an Assistant Commissioner to whom the power of disposing of any question or class of questions connected with such institutions shall have been delegated in writing by the Deputy Commissioner.

3. Government may undertake the management of a religious or charitable trust, (1) at the option of the creator of the trust, provided he has reserved no interest of a residuary or beneficial nature for himself; (2) when the trustees provided by the instrument of trust or actually in charge of the institution all expire or disclaim; (3) when there is a breach of trust, or gross and persistent mismanagement or misapplication of the trust property; (4) when the trustees, or surviving trustees, or the person or all the persons in actual possession and management of the institution voluntarily transfer the management; or (5) when the sole beneficiary or all the surviving beneficiaries voluntarily agree to transfer possession and management.

Reference by the Muzrai Officer to District Judge in cases of dispute.

or property is situated.

4. Whenever a dispute arises whether any charitable or religious trust has been actually constituted in respect of any institution, endowment or property, the Muzrai Officer may make a reference to the Court of the District Judge in whose jurisdiction the greater part of the institution

5. The letter of reference shall be registered and disposed of as a suit between the Muzrai Officer as plaintiff and the parties in possession of the property or opposing the contention of the Muzrai Officer as defendants.

Disposal of the reference.

6. Instead of himself making the reference, the Muzrai Officer may authorise any one or more persons to file a suit under the provisions of Section 92 of the Code of Civil Procedure.

Authorisation of persons to file a suit under Section 92 of the C. P. C.

7. In disposing of suits and references under the foregoing sections, the Court shall have full power to apportion and award costs either against the parties or against the estate in dispute; Provided that no Court Fees shall be charged in respect of proceedings following on a reference under Section 4.

Award and apportionment of costs.

8. When it is brought to the notice of the Muzrai Officer that the property of a religious or charitable institution dedicated for the benefit of the public or a defined section of the public is being grossly and persistently mismanaged, he may institute an enquiry into the truth of the allegations against the persons in possession and management of the property or the institution.

Enquiry regarding mismanagement of the property of a religious or charitable institution.

9. If the allegations of gross and persistent mismanagement of the institution or of any property pertaining thereto, or of any misapplication or misappropriation of any part of the property, or any breach of trust in respect thereof are proved; the Muzrai Officer may order,

Order by Muzrai Officer in such cases.

- (1) that the institution may be taken under the management of Government;
- (2) that property which has been mismanaged or misappropriated may be delivered back either to the institution or to the possession of Government for the institution;
- (3) that security may be given for the proper performance of the trust or management of the property;
- (4) may frame a scheme for the proper management of the institution or management of its property and the application thereof; and
- (5) pass such other ancillary or necessary orders as the case may require in accordance with justice and equity.

10. Where property belonging to a religious or charitable institution has been wrongfully alienated by way of sale, barter, mortgage, lease or otherwise within three years before the dispute, the Muzrai Officer may, after giving notice to the alienee and holding a summary enquiry (in accordance with the provisions of the Mysore Land Revenue Code) direct that possession be restored to the institution or that Government assume possession thereof on behalf of the institution.

Procedure in cases of wrongful alienation of property belonging to a religious or charitable institution.

11. Where the whole or part of the objects of a charitable or religious trust has failed, the Muzrai Officer may, subject to such general rules or special orders as Government may have issued, after notification in the official Gazette and hearing such parties as may appear in an enquiry, pass an order directing that the property or the proceeds thereof in respect of which the object has failed, may be utilized for some object of a similar nature, and may frame a scheme for administration thereof.

Failure of the object of trust.

12. Any person against whom an order has been passed under Sections 9 and 10 directing dispossession or recovery of possession of property or any person who is aggrieved by an order of the Muzrai Officer passed under Section 11 may within six months file a suit in the Court of the District Judge in whose jurisdiction the greater part of the property is situate, for cancellation of such order making the Muzrai Officer one of the defendants.

Suit by a person aggrieved by an order passed under Sections 9, 10 and 11.

If no such suit has been filed or if it has been dismissed by the Court, the Muzrai Officer may after the lapse of six months from the date of his original order execute his order and may exercise for that purpose all the powers of a Civil Court in executing decrees;

6 months
from

Provided that in cases in which the property to be disposed of under Section 11 exceeds three thousand rupees in value or the annual income thereof is more than Rs. 300 in value, the sanction of Government shall have been obtained for the order.

13. Government shall have power to make rules directing that persons in charge of charitable or religious institutions shall keep regular accounts of income and expenditure, and submit such returns, and supply such information as may be required in accordance with such rules, and may by said rules prescribe a penalty not exceeding one hundred rupees for any infraction thereof.

Maintenance of accounts by persons in charge of religious or charitable institutions.

14. Where any inam granted by Government for the upkeep of any religious or charitable institution is wrongfully alienated or has passed to the possession of a third party in any manner, and the proceeds thereof have been diverted from the purpose for which it had been granted, the Muzrai Officer may direct that the property may be resumed and retransferred to the institution for whose benefit the inam was intended, or cancel the inam tenure and impose the full assessment due to Government under the provisions of the Land Revenue Code or cancel the tenure and direct the assessment recovered to be handed over for the benefit of the original institution;

Wrongful alienation of inams granted for the upkeep of religious or charitable institutions.

Provided that no person who has had adverse possession of a property for a period of 12 years shall be deprived of such possession.

15. Government may appoint Dharmadarsis to manage the affairs of charitable and religious institutions for such term and with such powers as may be prescribed and may frame rules for the conduct of business among them.

Appointment of Dharmadarsis.

16. Government may invest Dharmadarsis with the powers, functions and responsibilities of a corporate person, including power to hold and dispose of property and to sue and be sued.

Investment of Dharmadarsis with the powers of a corporate person.

17. Government may also appoint a Committee of persons chosen by election or otherwise with such powers of management and supervision as may be prescribed by rules, over one or more religious or charitable institutions.

Appointment of Committees with powers of management.

18. It shall be lawful for any trustee or person or persons having the management or control of any religious or charitable institution under Sections 15, 16 or 17 or for Government when it manages such an institution, to invest money belonging to the institution and not required for immediate use in any of the following securities, viz.:—

Investment of trust money.

(a) In Promissory Notes, debentures, stock or other securities of the Government of India;

(b) In stock or debentures of, or shares in, Railway or other Companies the interest on which shall have been guaranteed by the Government of Mysore;

(c) On a first mortgage of immovable property situate in Mysore; provided that the property is not a lease-hold for a term of years and that the value of the property exceeds by one-half, or if it consists of buildings, exceeds by three-fourths, the mortgage money; or

(d) On any other security expressly authorised by the Instrument of Trust.

19. Arrears of rent or revenue due from tenants in respect of property belonging to a Muzrai institution may be recovered by the officers empowered to recover revenue due to Government in the same manner as arrears of land revenue due to Government.

Recovery of arrears of rent or revenue due to a Muzrai institution.

20. When the property of any religious or charitable institution is situated in more districts than one, the Deputy Commissioner in whose district the institution itself is situated, or with his consent, any other Deputy Commissioner in

Procedure when property is situated in more districts than one.

whose district any part of the property is situated, may exercise all the powers conferred by this Regulation as regards the whole of the property; provided that, in cases of doubt, Government may direct any one of the Deputy Commissioners having jurisdiction to take cognisance of the whole matter.

21. Every order passed by a Muzrai Officer which is not liable to be set aside by a suit filed under any of the provisions of this Regulation shall be subject to an appeal to Government in the same manner and subject to the same limitations as appeals lying to Government in cases under the Land Revenue Code and every decree or order passed by a Muzrai Officer may be similarly revised by Government.

Appeals from orders of a Muzrai Officer and revision.

22. Any order passed under this Regulation or the rules framed thereunder by a Muzrai Officer or the Muzrai Department of Government shall not bar a suit under the provisions of Section 92 of the Code of Civil Procedure.

Saving of suits under Section 92 of the Civil Procedure Code.

23. The foregoing provisions shall not apply to Mathas or the property belonging to Mathas which are in the possession of Mathadipathis entitled by law or general or particular usage to exercise powers of management or ownership.

Exemption of Mathas from the operation of the foregoing provisions.

24. Government may take over the management and possession of the property of any Matha or other institution of a similar nature (1) when the Mathadipathi voluntarily applies for such help and places the institution or its property under the management of Government; (2) when the Mathadipathi is dead or has left the country and has not been heard of for more than seven years, and has not made legal and satisfactory arrangement for the carrying on of the ordinary business of the institution, and there is no successor duly appointed according to the rules applicable to succession to the office; (3) when the Mathadipathi is a minor without a legally appointed guardian, fit and willing to act as such or is for other reasons unable to manage its affairs; or (4) when it is proved that the Mathadipathi has been grossly mismanaging the property or habitually alienating the greater bulk of it for enriching his bodily relations or for other improper purposes; or that he is habitually neglectful of and grossly indifferent to, the duties and responsibilities of his *Asrama*.

When management of Mathas may be assumed by Government.

25. Whenever a complaint is made by at least half the number of householders or in cases in which the Matha has a large following, by at least a hundred house-holders subject to its jurisdiction as disciples, of any mismanagement or neglect referred to in the last clause of the previous section, Government may order an enquiry to be held.

Enquiry into allegations of mismanagement of a Matha.

26. In the case of such institutions as are classed as major Mathas by Government, the enquiry shall be before a Committee of not less than three members appointed by Government and, in other cases, by the Deputy Commissioner.

Authority before whom the enquiry is to be held.

27. When the decision of the Committee appointed or of the Deputy Commissioner has been approved by Government, it may be carried out by the Deputy Commissioner of the District in which the institution or the greater part of the property is situated.

Execution of orders passed.

28. Where any Matha or other similar institution has come under the management of Government, Government may take such steps as are in accordance with law or usage (1) to appoint a proper Mathadipathi and (2) to fulfil the indispensable functions of the institution till a proper Mathadipathi is nominated in accordance with usage.

Appointment of Mathadipathi by Government.

29. When property of a Matha has for any reason come into the possession of Government under the provisions of this Regulation, Government may exercise all the powers of management and disposal possessed by a duly appointed

Powers of Government in regard to management of a Matha.

Mathadipathi in possession; and may make and carry out a scheme either directly by Officers appointed or by a Committee constituted for the purpose.

30. Government shall also have full power to dispose of the income of the institution as long as it is under its management (after making due provision for the maintenance of the Mathadipathi, for carrying on *Puja* services in temples and other places of worship appertaining to the institution in a reasonable manner) on objects of charity or for the spread and encouragement of religious instruction according to the tenets of the said Matha.

31. When there is a dispute about the office of a Pujari or other servant of a Muzrai institution which by law or usage descends by hereditary right, the Amildar of the Taluk in which the institution is situated shall hold an enquiry in the presence of the parties interested and record statements and evidence relevant to the case.

32. The Deputy Commissioner or an Assistant Commissioner to whom the record may be referred by the Deputy Commissioner shall, after reading the record of enquiry by the Amildar and hearing the parties interested, pass a decision on the merits of the case.

33. In the absence of proof to the contrary, no temple office or service in a Muzrai institution shall be deemed to descend by hereditary right unless it has been conferred originally with such an express stipulation in writing by a person with due authority or has been held successively by three generations of the same family in succession in due legal course.

34. Where there is no claimant entitled to succeed to the office of a Pujari or other office in a Muzrai institution, the appointment shall be made by the Deputy Commissioner in cases of temples under the direct management of the Muzrai Department, or in cases of other temples by the devotees of the temple living in its vicinity under such rules as may from time to time be made by Government.

35. Where a majority of not less than three-fourths of the inhabitants of a village or other unit, being Bhaktas of a temple, object to the claim by hereditary right of a person to the office of Pujari of the temple, such person shall be set aside either for life or altogether, provided that the objectors pay to the claimant such amount by way of compensation as may be fixed by the Muzrai Officer.

36. The enquiry referred to in Sections 8, 11, 25 and 26 shall be conducted in the manner prescribed for a formal enquiry under the Mysore Land Revenue Code, after issue of notices to the parties interested and the Muzrai Officer or other person or persons holding the enquiry shall have all the powers of a Revenue Officer empowered to conduct such formal enquiry.

37. In all matters in which a Muzrai Officer or the Muzrai Department of Government has power to pass any order or to take any action, Civil Courts shall exercise jurisdiction only to the extent allowed by this Regulation.

STATEMENT OF OBJECTS AND REASONS.

The question of devising means for the better management of religious and charitable institutions in the State has been engaging the attention of Government for some time past. The State Muzrai Department has under its control all institutions which enjoy an endowment in any form from the Government. But there are besides, numerous institutions which have sprung up as the result of private charity but over which Government cannot at present exercise any powers of control. Nor is it quite desirable that institutions of this kind should come under Government management, provided the donors or their representatives or other persons responsible for their management administer them efficiently. But where owing to the death of the donors or other causes the institutions are not properly managed and the funds of the charity are not appropriated for the objects which the creators of the charitable trust had at heart, it is desirable that the Government on behalf of the public who are beneficially interested in the charity should intervene and assume control in order that the intentions of the donor may be carried out as nearly as practicable.

The provisions contained in Section 92 of the Civil Procedure Code in regard to suits relating to public charities are generally admitted to be inadequate, and representations for some kind of legislative action have been frequently made at the Representative Assembly. Government agree in the view that if the endowments made by private individuals for the establishment and upkeep of religious and charitable organisations are to be preserved for the benefit of the public, measures should be adopted to prevent the misapplication of trust property and the misappropriation of its funds. With this object the present bill has been prepared.

It comprises within its scope provisions relating to three classes of institutions of a religious or charitable character, viz.—

- (1) Institutions already under the State Muzrai Department such as temples, chatras, etc.
- (2) Religious or charitable institutions founded and maintained exclusively by private charity, and
- (3) Mathas.

In respect of the institutions referred to in the first of the above classes, the Bill besides incorporating certain rules which now regulate the conduct of the Muzrai Department in the management of the institution in its charge, makes provision for certain new matters such as the constitution of Committees by election or otherwise for supervising the affairs of an institution and the settlement of the mode of succession to the office of pujari of a temple where the office is claimed by hereditary right. Facilities for the more efficient management of the properties belonging to the institutions are also proposed to be created.

In regard to institutions established solely by private charity the Bill confers on Government the power of intervening and assuming the management of such institutions where it is proved that the funds of the charity are being grossly mismanaged or misapplied or in certain other similar circumstances. The institutions are then to be managed as State Muzrai institutions. Government is also given power to intervene in the case of failure of the object of a trust and direct that the funds be appropriated towards some other charitable object of a similar nature.

In respect of both classes of institutions referred to above, power is proposed to be taken for the prevention of fraudulent alienation of trust property and for the recovery of certain arrears, such as rent of immovable property, as if they were arrears of land revenue.

The powers of Government are to be exercised through a Muzrai Officer who shall ordinarily be the Deputy Commissioner of the district. Persons aggrieved by an order of this officer may in certain cases contest their validity by a suit in a Civil Court and in all other cases the Muzrai Officer's action is subject to appeal and revision just like orders passed by a Revenue Officer under the Land Revenue Code. Civil Courts shall exercise jurisdiction in these matters only to the extent allowed by the Bill.

The third class of cases refers to Hindu Mathas. It is well known that though these institutions are of the nature of public trusts, their duly elected heads for the time being, have always enjoyed much larger powers than mere trustees. It is therefore considered unnecessary to provide that Government should have the same powers of interference in their affairs as in those of temples and other similar institutions. Instances, however, have come under the notice of Government, where the affairs of such institutions have been grossly and persistently mismanaged and the heads of the institutions have conducted themselves in a manner repugnant to the sentiments of the disciples. It is therefore proposed to take power in the Bill on behalf of Government to assume the management of the properties belonging to such institutions and to provide for the conduct, in accordance with usage, of the puja and other services and to dispose of the balance of the income, if any, on objects of charity or for the spread and encouragement of religious instruction according to the tenets of the Matha.

Instead of itself managing the affairs of a Matha Government may after framing a scheme delegate the function of carrying it out to a Committee constituted for the purpose.

In certain cases Government may also take steps for the appointment of a Mathadhipati in accordance with existing usage. Government hope that the occasions for interference on their part in regard to the management of this class of institutions will always be exceptional.

NOTES ON CLAUSES.

Clause 2.—The definition of "Muzrai Institution" given here is what has been generally adopted in the Muzrai Department of Government, with the addition to it of other institutions taken over under Government management.

Clauses 4 and 8.—Clause 4 refers to cases in which it has to be settled whether a public trust has actually been constituted, and clause 8 to cases in which the constitution of the trust is not disputed but gross and persistent mismanagement is alleged.

Clause 5.—When such references are disposed of as suits in a Civil Court, the decisions become subject to appeal and revision under the provisions of the Civil Courts Regulation and the Code of Civil Procedure.

Clause 7.—This provision would enable a Court to award costs at discretion even against the Muzrai Officer.

Clause 9.—Gives very wide powers to a Muzrai Officer similar to those which a Civil Court under rules of equitable jurisdiction and otherwise may now exercise.

Clause 10.—Refers to any property of such institutions, whereas clause 14 refers to inams granted by Government. The latter provisions enact the rule at present in force, except that 12 years is given as the limit for dispossession. The power of Government to assess such inam lands fully under the Inam rules is left in tact, as it is not a Muzrai matter. It is a question whether even for dispossession, a longer period than 12 years (30 or 60 years) should not be prescribed.

Clause 15.—There are rules in force about the appointment and functions of dharmadarsis, but it is considered in expedient to give them recognition in the Regulation.

Clause 17.—Would enable Government, if need be, to constitute district or taluk committees to supervise such institutions.

Clause 18.—Provides a general rule for investment of money belonging to these institutions and is similar to rules recognised in enactments, etc., dealing with the administration of trust properties.

Clause 19.—Creates a power which has often been felt to be a *desideratum* in respect of property under the management of Government. This would be applicable to cases in which such management has also been entrusted to dharmadarsis appointed by Government.

Clauses 23-30.—Refer to Mathas and other similar institutions.

Clause 24.—Defines the circumstances in which Government may interfere in respect of management of a Matha and clause 25 somewhat strictly defines cases in which alone an enquiry may be initiated concerning its affairs.

Clauses 28, 29 and 30.—Define the powers of Government when it has intervened to assume management of the affairs of such institutions.

Clauses 31 to 35.—Deal with disputes about pujari and other offices, which, under an old rule recognized as having the force of law, are excluded from the jurisdiction of Civil Courts. Clauses 31 and 32 are rules to regulate procedure, which at present is not uniform. What offices descend by hereditary right are left to be decided by usage, but clause 33 supplies a rule where (as in many cases) no satisfactory proof of usage can be adduced.

Clause 34.—Allows Government to empower persons interested in temples to elect the office bearers.

Clause 35.—Introduces a somewhat novel rule and empowers devotees of temples to set aside hereditary claims by paying compensation. The justification for such compulsory acquisition lies in the fact that temples are primarily meant to serve as places of worship and would become useless if the pujari or the chief officiating priest ceases to have the respect and confidence of the majority of devotees.

Clause 36.—Applies the Land Revenue Code and Rules to enquiries held under the Regulation and

Clause 37.—Limits the jurisdiction of Civil Courts in matters dealt with in the Regulation.